

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Clifford Baker, #317850,)	
)	C/A No. 8:10-0298-MBS
Petitioner,)	
)	
vs.)	
)	O R D E R
Leroy Cartledge,)	
)	
Respondent.)	
_____)	

Petitioner Clifford Baker is an inmate in custody of the South Carolina Department of Corrections. He currently is housed at McCormick Correctional Institution in Columbia, South Carolina. On February 9, 2010, Petitioner, proceeding pro se, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254, contending that he is being detained unlawfully.

This matter is before the court on motion for summary judgment filed by Respondent Leroy Cartledge on April 14, 2010. Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the summary judgment procedure and the possible consequences of failing to respond adequately. Petitioner filed a response in opposition to Respondent's motion on May 20, 2010.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Kevin F. McDonald for pretrial handling. On October 22, 2010, the Magistrate Judge issued a Report of Magistrate Judge in which he recommended that the Respondent's motion for summary judgment be granted. Despite being granted extensions of time on November 1, 2010 and December 8, 2010, Petitioner filed no objections to the Report of Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report of Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report of Magistrate Judge and incorporates it herein by reference. Respondent’s motion for summary judgment (ECF No.27) is **granted** and Petitioner’s petition dismissed with prejudice.

CERTIFICATE OF APPEALABILITY

Rule 11(a) of the Rules Governing Section 2254 Cases, as effective December 1, 2009, provides that the district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. A certificate of appealability will not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that any assessment of the constitutional claims by the district court is debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that Petitioner has not made the requisite

showing. Accordingly, the court **denies** a certificate of appealability.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

January 14, 2011.

NOTICE OF RIGHT TO APPEAL

**Petitioner is hereby notified of the right to appeal this order
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**